CERTIFICATE OF ELECTRONIC TRANSMISSION
37 C.F.R. § 1.8

I hereby certify that this response is being electronically filed with the United States Patent and Trademark Office via EFS-Web on the date below:

June 11, 2007
Date

Steven L. Highlander

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Markus Hecker and Andrea H. Wagner	Group Art Unit: 1633
Serial No.: 10/526,521	Examiner: Maria Gomez Leavitt
Filed: March 1, 2005	Atty. Dkt. No.: DEBE:054US
For: DECOY-OLIGONUCLEOTIDE INHIBITION OF CD40-EXPRESSION	Confirmation No.: 9672

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT (37 CFR 1.121) DATED 06/01/07

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Commissioner:

This paper is submitted in response to the Notice of Non-Compliant Amendment (37 CFR 1.121) dated June 1, 2007 for which the date for response is July 1, 2007.

It is believed that no fee is due; however, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to this document, the Commissioner is authorized to deduct said fees from Fulbright & Jaworski L.L.P. Account No.: 50-1212/DEBE:054US/SLH.

In response to the restriction requirement which the examiner imposed, Applicants again elect, with traverse, to prosecute claims 1 and 2, *i.e.*, the Group I claims. Additionally, applicants elect SEQ ID NO: 15. The basis for the traversal is as follows.

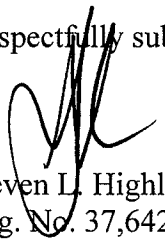
The examiner objects the unity of the respective invention, but in so doing, it appears that the examiner does not fully understand the invention. The present invention refers to double-stranded oligonucleotides, so-called "decoys," which serve *in vivo* or *in vitro* as competitors transcription factors. These transcription factors normally bind in a cell to a specific region in the genome. Please see page 10 of the application for additional discussion. These decoys do not code for a polypeptides as suggested at the bottom of page 2 and the beginning of page 3 of the restriction. The examiner further confuses the issue by stating, at page 3, that the linking technical feature appears to be a double-stranded DNA oligo sequence this is differentially expressed. Again, it is noted that the decoy is ***never*** expressed, but is introduced as a decoy into the cell or a medium without any translation event.

Furthermore, the 9-mer core-binding sequence are key nucleotide residues of the decoy that facilitate binding of any AP1 transcription factor. Thus, the Markush group of sequences satisfies the requirements of functional and structural homology, and as such, restriction is improper. See MPEP §803.02:

> Since the decisions in *In re Weber*, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and *In re Haas,* 580 F.2d 461, 198 USPQ 334 (CCPA 1978), it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. *In re Harnisch*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and *Ex parte Hozumi*, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984). Broadly, unity of invention exists where compounds included within a Markush group (1) share a common utility, and (2) share a substantial structural feature essential to that utility.

The examiner is invited to contact the undersigned attorney at 512-536-3184 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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Date: June 11, 2007